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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re A.L. et al., Persons Coming Under  
the Juvenile Court Law.

H045868, H045964  
(Santa Cruz County  
Super. Ct. Nos. 17JU00139,  
17JU00140)

SANTA CRUZ COUNTY HUMAN  
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

A.L., et al.,

Defendants and Appellants.

Appellants A.L. (Mother) and S.L. (Father) are the parents of S.L., now five years old, and her four-year-old brother, A.L. Appellants seek review of the juvenile court's order terminating their parental rights and freeing the children for adoption, pursuant to Welfare and Institutions Code section 366.26.<sup>1</sup> They also appeal from the denial of their petitions under section 388 to modify previous orders. Both appellants focus solely on the termination decision, contending that there is no substantial evidence to support the finding that the minors were likely to be adopted, within the meaning of section 366.26, subdivision (c)(1). We disagree and affirm the order as to both parents.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

## *Procedural History*<sup>2</sup>

### *1. Jurisdiction and Disposition*

On May 11, 2017,<sup>3</sup> Santa Cruz County's Department of Family & Children's Services (the Department) filed separate juvenile dependency petitions on behalf of the minors. A.L. was then two years old, and S.L. was then three years old. Each petition alleged that the child came within the jurisdiction of the juvenile court under section 300, subdivisions (b)(1) (failure to protect) and (j) (abuse of sibling).

As to jurisdiction under section 300, subdivision (b)(1), the Department alleged in each petition the following facts. Mother "abuses controlled substances that include but are not limited to methamphetamine and said abuse negatively impacts her ability to provide safe and appropriate care for [the minors]. [Mother] has a long history of substance abuse and has been provided with multiple services to address her substance abuse issues." It alleged that Mother's abuse of controlled substances, including while acting as the children's primary caregiver, placed the minors "at substantial risk of serious physical harm." In support of the claim of jurisdiction under section 300, subdivision (b)(1), the Department further alleged that the minors' father was "unable and/or unwilling to protect his children . . . from the behavior of [Mother]." Father's "inability or unwillingness to protect his children from [Mother's] behavio[r] places [the minors] at substantial risk of serious physical harm."

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<sup>2</sup> We have taken judicial notice of the record and opinions in the parents' prior appeals: *In re A.L.* (H044833, February 9, 2018 [nonpub opn]), in which we affirmed the order declaring A.L. and S.L. dependent children and bypassing reunification services for Mother; *S.L. v. Superior Court* (H045515, April 27, 2018, [nonpub. opn.]), in which we denied Father's petition for writ relief from the order terminating services and ordering a section 366.26 permanency planning hearing; and *In re A.L.* (H045404, July 11, 2018 [nonpub. opn.]), in which we affirmed the order denying Mother's first section 388 petition.

<sup>3</sup> All dates referred to in sections 1 through 4 of this procedural history are in 2017 unless otherwise specified.

On May 5, Father had observed in the home that Mother shared with the minors “a spoon and cotton which is used to shoot heroin . . . , and [Father] left the children in [Mother’s] care.” Three days later, while Mother was caring for the minors, a pipe and a baggie containing methamphetamine fell out of her pocket, and methamphetamine was found in the minors’ bedroom and in the hallway. In addition, needles were found that were accessible to the minors. Father was present in the home at the time and “failed to remove the children from the home until directed to do so by law enforcement.” Also on May 8, the home where the minors resided was in a filthy and unsanitary state, with “clothes everywhere, food and debris . . . appear[ing] to have been in the home for a long time and the children’s drinking cups [containing] old milk.”

Mother was arrested on May 8 and charged with possession of controlled substances and drug paraphernalia, child endangerment, and violation of probation. On May 9, Father was arrested for receiving stolen property.

The Department further alleged in the petitions that S.L. “was abused and/or neglected as defined by the 300 Section of the Welfare and Institutions Code and there is a concern that [A.L.] will be abused and/or neglected in a similar manner.” “Due to their substance abuse, the [minors’] parents . . . were provided with 36 months of court-ordered Family Maintenance Services [which] included but were not limited to Psychiatric Medication evaluation, General Counseling, Parenting Classes, Substance Abuse services and Substance Abuse testing.”

As to jurisdiction under section 300, subdivision (j), the Department alleged in both petitions the following facts. The minors’ half sibling, J.J., “was abused and/or neglected as defined by the 300 Section of the Welfare and Institutions Code and there is a concern that [A.L. and S.L.] will be abused and/or neglected in a similar manner.” Mother “was provided with court-ordered services from May 2009 until November 2011 due to her substance abuse.” J.J. was removed from Mother’s care in October 2010. She

was provided services, but reunification was unsuccessful; Mother's parental rights were terminated, and J.J. was subsequently adopted by the maternal grandmother.

On May 15, after a contested detention hearing, the court found that the Department had made a prima facie showing in support of the allegations of the petitions and ordered the minors detained.

The Department filed a jurisdiction/disposition report on June 6. It noted that the minors had been placed in a licensed foster family home. In the report, the Department recited the extensive child welfare history that predated the petitions. In 2013, there were a number of reports concerning Mother's use of methamphetamine while she was pregnant with S.L. In September 2013, after S.L.'s birth, the Department filed a dependency petition against Mother and Father alleging general neglect of S.L., based upon, inter alia, (1) Mother's having jeopardized S.L.'s health by exposing her to drugs in utero and not consistently obtaining prenatal care; (2) Father's failure to recognize Mother's drug use and take steps to intervene; and (3) Father's "own history of substance abuse and criminal history [which placed S.L.'s] safety at risk." As a result of the filing of this petition, the family received 36 months of family maintenance services. The proceeding was dismissed in September 2016.

There were subsequent referrals in 2016 concerning alleged neglect of the minors by their parents. In January 2016, Mother had been cited and released as a result of her having drug paraphernalia in her car that was accessible to the minors. Law enforcement had responded to a laundromat, where Mother appeared to have been under the influence, with A.L. crying and locked inside the car with the keys unsecured in the front passenger seat. Police determined that Mother was not under the influence. Drug paraphernalia were found by the police during a probation search of the car. In March 2016, Father had tested positive for methamphetamine and heroin after a prior inpatient admission to a medical facility, and he admitted a long history of drug use. He also expressed a willingness to enter a methadone program.

The Department noted the lengthy child protection history involving the minors' half sibling, J.J., between July 2007 and November 2011, at which point the court had terminated services to Mother. Mother's parental rights to J.J. were terminated in June 2013, and the child was adopted by his maternal grandmother.

The Department described Mother's lengthy substance abuse history. She "ha[d] been court ordered to complete drug treatment on four occasions; however, she continue[d] to chronically use chemical substances." Father also had a lengthy substance abuse history. He reported to the Department that his sobriety date was March 21, 2016. He admitted that he had relapsed the following March; he then made contact to obtain treatment and entered the Evolving Door Sober Living Environment on April 24, where he resided as of the report date.

Mother had an extensive criminal arrest and conviction history dating back to 2002. Father had an extensive criminal arrest and conviction history dating back to 1999.

Based in part on "[M]other's chronic, extensive substance abuse" (emphasis omitted) and the permanent severing of Mother's parental rights to J.J., the Department recommended that Mother be denied reunification services. It cited section 361.5, subdivisions (b)(10), (11), and (13) in support of this position.<sup>4</sup> Although Father met the

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<sup>4</sup> "Reunification services need not be provided to a parent . . . when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent . . . failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent . . . pursuant to Section 361 and that parent . . . is the same parent . . . described in subdivision (a) and that, according to the findings of the court, this parent . . . has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent . . . [¶] (11) That the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent. [¶] . . . [¶] (13) That the parent . . . of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and

bypass criteria under section 361.5, subdivision (b)(13), the Department recommended that family reunification services be offered to him, based in part on his having completed a residential treatment program and having “made efforts prior to the Department’s most recent involvement to address his substance abuse issues.”

At the contested jurisdiction/disposition hearing on July 10, the juvenile court found all the allegations in the two petitions true. It determined that the minors were persons described by section 300, subdivisions (b) and (j), and it declared them dependents of the court. It ordered family reunification services for Father, but it determined that reunification services should not be provided to Mother pursuant to the statutory bypass provisions specified in subdivisions (b)(10), (b)(11), and (b)(13) of section 361.5. The juvenile court further ordered supervised visitation for Father at least three times per week. Mother was to receive supervised visitation with the minors at least once a month.

## *2. Mother’s First Appeal*

Mother appealed from the dispositional orders, contending that the juvenile court had abused its discretion and denied her due process by refusing to continue the jurisdiction/disposition hearing based on Mother’s untimely appearance, and by denying her counsel’s request to reopen the evidence to allow Mother to testify. Mother further argued that the court had misapplied the reunification bypass provisions of section 361.5, subdivisions (b)(10), (b)(11), and (b)(13). This court rejected each of these assertions and affirmed the order. (H044833).

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has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court’s attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions even though the programs identified were available and accessible.” (§ 361.5, subd. (b).)

### *3. Mother's First Section 388 Petition*

On December 13, Mother filed a request to modify the July 10 order and direct the Department to provide reunification services to her. Mother claimed that she had “completely transformed herself,” and she asserted that it was “best for the children to be raised in their [m]other’s safe and loving home.”

In her supporting statement, Mother offered the following facts regarding her progress toward this transformation. She had participated in an intensive outpatient program after August 10 and completed it November 17. Drug tests administered in the program were negative. She was living in “Sober Living House,”<sup>5</sup> had attended “Lighthouse Therapy” and NA/AA meetings, and had completed three parenting classes. She consistently visited with the children once a month and was “very appropriate, loving and attentive during visitation.” Mother also wrote a detailed assessment of her children’s physical and emotional needs and her views on the developmental consequences of separating children from their parents. It was in children’s best interest, she said, “to preserve relationships with both parents” in order to address their need for “roots” and “healthy attachments” to others. Her own children wanted to return to her, they were “secure” in her “unconditional love for them,” and they were “their true selves” when they were with her.

The juvenile court denied the petition, finding that Mother’s participation in substance abuse programs demonstrated only “changing as opposed to ‘changed’ circumstances,” and that the proposed change order would not be in the children’s best interest “considering mother’s long history of substance abuse and what appears to be early stages of her most recent attempt to maintain her sobriety.” In H045404, this court

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<sup>5</sup> Mother’s residence at that time is unclear. The petition asserted that she was living in “Sober Living House,” but Briana Kahoano, the supervisor of her drug recovery program, stated that Mother had found her own apartment in Los Gatos.

found no abuse of discretion in the court's ruling: Mother not only had failed to show changed circumstances, but had not shown that reunification services were in the best interests of her children.

#### *4. Six-Month Review of Father's Reunification Plan*

As noted, the court ordered reunification services for Father at the July 10 hearing. By the six-month review hearing in January 2018, however, the Department was concerned that Father continued to have "issues" around substance abuse, an extensive criminal history, and an inability to self-regulate during visits with the minors; moreover, he had continued to associate with Mother, which was "troubling" to the Department given mother's history of substance abuse and inappropriate behavior around the minors. Consequently, the Department was recommending termination of services and the scheduling of a permanency planning hearing. The court agreed, finding, inter alia, that the Department had provided reasonable services to Father, but his progress had been poor and there was not a substantial probability that the minors could be returned safely to him within six months. The court therefore terminated reunification services for Father and scheduled a hearing under section 366.26 for May 1, 2018. Father's ensuing petition for extraordinary writ relief was denied by this court in H045515 on April 27, 2018.

#### *5. Mother's Second Section 388 Petition*

Mother filed another petition on April 30, 2018, asking the court to vacate the section 366.26 hearing, return S.L. and A.L. to her care, "and/or offer reunification services," or either place the children for adoption by the maternal grandmother or place them with their "NREFM/Godmother."

On June 4, 2018, the parties appeared for a hearing on both mother's petition and the section 366.26 determination. After receiving testimony from Mother, Father, and the current social worker, the court commended Mother for her progress; but it again found only "changing as opposed to changed circumstances." It also noted Mother's "pattern of

not being forthcoming . . . about what’s happened in this case.” The court concluded that Mother had “failed to meet her burden of proof” to show the necessary changed circumstances and that reunification services were not warranted. It therefore denied Mother’s section 388 petition. Mother filed her notice of appeal in *In re A.L., et al.; Santa Cruz County HSD v. A.L.* (H045868) from this order.

The court then proceeded to address the issues presented under section 366.26. It first stated, “I don’t think there’s any dispute that by—and I am just stating my clear-and-convincing-evidence tentative would be that these children are generally and specifically adoptable.” The court heard argument on the question whether an exception to termination of parental rights existed. Father’s position was that the “beneficial relationship” between him and the children met the statutory exception to termination. (See § 366.26, subd. (c)(1)(B)(i).) Mother also advanced the exception for a beneficial sibling relationship with their half-brother. (See § 366.26, subd. (c)(1)(B)(v).) The court took the issue of termination under submission and continued the section 366.26 hearing to July 3, 2018.

#### *6. Pre-hearing Section 388 Petitions*

At 4:55 p.m. on July 2, 2018, the day before the continued section 366.26 hearing, Father filed a petition under section 388, asking the court to vacate the section 366.26 hearing, return the minors to his care, “and/or offer reunification services, and/or place [S.L.] and [A.L.] for adoption and designate their maternal grandmother . . . as their prospective adoptive parent,” in the home of their half-brother, who had also been adopted by the maternal grandmother. Before the hearing began the next morning, Mother filed her third section 388 petition, requesting a continuance in order for a bonding study to be conducted to facilitate the determination of the children’s best interests. Mother expressed the view that “it’s best for [S.L.] and [A.L.] to be placed with whomever they are bonded to. Positive, appropriate attachment and bonding between child and caregiver is absolutely necessary for [S.L.] and [A.L.]’s emotional and

mental well-being and overall development. A bonding study gives them a voice and a chance to be heard.”

At the July 3, 2018 hearing counsel for the minors expressed opposition to the late petitions and any additional continuances; it had already been six months since the original scheduling of the section 366.26 hearing. The time for a bonding study, he added, had “long come and gone.” County counsel added that there had been no request to reopen evidence, and to delay a decision in permanency planning was not in the children’s best interests. The court noted that it had not received the section 388 petitions, and in its view, their late filing did not warrant further delay in the continued section 366.26 hearing.

The maternal grandmother asked that she be considered for adoption, but the court informed her that it had not reopened evidence. The court stated that it would review the section 388 petitions when they were available on its docket, but “insofar as there is an attempt to try to continue the hearing today, I do find that [the minors’] need for permanency outweighs any interest to continue this matter to conduct a bonding study . . . so if construing it as an oral motion to continue[,] that oral motion to continue is denied as lacking in good cause.” The court then proceeded with the determination of the permanent plan for the minors.

#### *7. The Section 366.26 Proceeding*

In its ruling the court first stated that there was “very compelling evidence concerning the secure and loving attachment [A.L.] had formed and then in the CASA report as well, there were discussions about how [S.L.] had indicated that she was calling her foster mother as mom.” The court again found by clear and convincing evidence that the children were generally and specifically adoptable and that the likely adoption date was December 18, 2018. It further found that the Department had complied with the case plan “by making reasonable efforts and taking very concrete steps to finalize the permanent plan of these children.” The court therefore terminated the parental rights of

both parents and ordered a post-permanency planning review hearing for December 18, 2018. Both parents filed timely notices of appeal, which pertain to *In re A.L., et al. Santa Cruz County HSD v. A.L., et al.* (H045964).

### *Discussion*

#### *1. Scope of Review*

Although Mother filed her notice of appeal in H045868 from the June 4, 2018 order denying her second (April 30, 2018) section 388 petition, she does not raise any issues pertaining to that order and thus has abandoned any challenge to it. Likewise, in H045964 neither parent contests the ruling denying the section 388 petitions they filed just before the section 366.26 hearing. And neither parent seeks review of the juvenile court's finding that the minors' relationship either with their parents or with their half-brother did not compel application of a statutory exception to termination of parental rights. (§ 366.26, subds. (c)(1)(B)(i), (c)(1)(B)(v).) Instead, both appellants focus on the single issue of whether the court erred in finding S.L. and A.L. adoptable.

The minors' adoptability was a question of fact for the juvenile court. On appeal, we apply the substantial evidence standard of review to that question.<sup>6</sup> "If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we must uphold those findings. We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. [Citations.] Rather, our task is to determine whether there is substantial evidence from which a reasonable trier of fact

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<sup>6</sup> The Department asserts that appellants have forfeited their challenge to the sufficiency of the evidence of the minors' adoptability. They cite no pertinent authority to support that claim. On the contrary, "a claim that there was insufficient evidence of the child's adoptability at a contested hearing is not waived by failure to argue the issue in the juvenile court." (*In re Brian P.* (2002) 99 Cal.App.4th 616, 623; accord, *In re Erik P.* (2002) 104 Cal.App.4th 395, 399; *In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1560-1561.)

could find, by clear and convincing evidence, that the minor is adoptable.” (*In re R.C.* (2008) 169 Cal.App.4th 486, 491 (*R.C.*).

Appellants have “the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order.” (*R.C.*, *supra*, 169 Cal.App.4th at p. 491.) “We therefore ‘presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.’ ” (*In re Josue G.* (2003) 106 Cal.App.4th, 725, 732, quoting *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) “Where the facts reasonably support more than one inference, we may not substitute our judgment for that of the trier of fact. Considering only the evidence favorable to respondent, the question is whether that evidence is sufficient as a matter of law. If so, we must affirm the judgment. [Citations.]” (*In re Walter E.* (1992) 13 Cal.App.4th 125, 140.)

## 2. *The Adoptability Finding*

Section 366.26 establishes that adoption is the most preferred permanent plan for a child after reunification services have been terminated. (§ 366.26, subd. (b)(1).) “If the court determines, based on the assessment . . . and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption.” (§ 366.26, subd. (c)(1).)

“The issue of adoptability posed in a section 366.26 hearing focuses on the *minor*, e.g., whether the minor’s age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor.” (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649 (*Sarah M.*)). “All that is required is clear and convincing evidence of the likelihood that adoption will be realized within a reasonable time. [Citation.]” (*In re Zeth S.* (2003) 31 Cal.4th 396, 406.) To be considered adoptable, a minor need not be in a prospective adoptive home and there need not be a prospective adoptive parent “ ‘waiting in the

wings.’ ” (*Sarah M.*, *supra*, at p. 1649; accord, *R.C.*, *supra*, 169 Cal.App.4th at p. 491.) However, “the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor’s age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent’s willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family.*” (*Sarah M.*, *supra*, at pp. 1649-1650; accord, *In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154.)

Appellants contend that the finding of adoptability is not supported by substantial evidence. “At best,” they argue, the finding was premature, because the minors had been in their current foster home for less than four months by the time of the section 366.26 hearing.<sup>7</sup> Appellants place weight on the experiences of the prior foster placements, noting the children’s “behavioral issues,” particularly S.L.’s aggressiveness toward A.L. These “difficulties,” according to appellants, “are ongoing and make them unlikely to be adopted within a reasonable time.”

Appellants’ position, however, calls for a re-weighing of the evidence toward the negative reports of the prior foster parents. It was the juvenile court’s role, not this court’s, to weigh the evidence before it. The record contains facts supporting the court’s determination that by clear and convincing evidence “these children are generally and specifically adoptable.”<sup>8</sup> By the time of the section 366.26 hearing S.L. was four years

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<sup>7</sup> The minors had actually been in their current placement for just over four months by the time of the hearing; they were moved there from their second foster home on February 28, 2018.

<sup>8</sup> Some courts have delineated a distinction between generally and specifically adoptable: “There is a difference between a child who is generally adoptable (where the focus is on the child) and a child who is specifically adoptable (where the focus is on the specific caregiver who is willing to adopt). [Citations.]” *In re J.W.* (2018) 26 Cal.App.5th 263, 267.) If the child is *generally* adoptable based on his or her age, physical condition, and social and emotional characteristics, “the child is considered

old; A.L. was three. The current social worker, Paige Baldhosky, described them as “adorable siblings” who “love animals and playing on the trampoline near their current home.” The social worker reported that “the children are consistently comforted” by their current foster parents, that they “seek them out for love, nurturing, reassurance and safety. The caregivers are eager to make [S.L. and A.L.] permanent members of their family through adoption.”

Baldhosky acknowledged that the children had “experienced severe parental neglect and trauma,” but they were “responding beautifully to the love, structure, nurturing and specialized parenting their current caregivers are providing them.” Although the prior foster parents had been unsuccessful in regulating S.L.’s aggressive behavior toward A.L., the current caregivers had made significant progress in this area; they were applying their “specialized parenting skills and their ability to utilize the resources they have learned [*sic*] to assist the children with normalizing their trauma experiences and supporting healthy self-regulating.”<sup>9</sup> Both were currently in therapy to

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generally adoptable [and] we do not examine the suitability of the prospective adoptive home.” (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061; accord, *In re I.W.* (2009) 180 Cal.App.4th 1517, 1526 (*I.W.*).) On the other hand, when the child has been deemed specifically adoptable based solely on a particular family’s willingness to adopt the child, “the analysis shifts from evaluating the characteristics of the child to whether there is any legal impediment to the prospective adoptive parent’s adoption and whether he or she is able to meet the needs of the child.” (*In re Helen W.* (2007) 150 Cal.App.4th 71, 80.)

It is unnecessary to weigh in on the parties’ discussion of general versus specific adoptability. Section 366.26, the statute governing termination of parental rights, does not draw this distinction, nor is the juvenile court required to separate a child’s adoptability assessment into general and specific adoptability. Instead, section 366.26 requires only a determination of whether the child is likely to be adopted within a reasonable time.

<sup>9</sup> The social worker reported that “the siblings are getting along with one another much better than previously reported by their former caregivers. It has been noted that the siblings do hit each other when frustrated, but are responsive to redirection from the caregivers, such as telling them not to hit, and to be kind to each other, etc. The caregivers report that if the children are highly dysregulated, they will engage them in a regulating activity such as going outside to run around or jump on the trampoline, which

identify the feelings and address the behaviors related to their past trauma and the adjustment to their new home. S.L.'s assigned Court Appointed Special Advocate (CASA) observed S.L. seeking comfort from her new foster mother, referring to her as "mom." And A.L. had held the foster father's face, saying " 'I'm happy, are you happy?' 'I like it here . . . I want to stay.' "

Absent some legal impediment or facts that contraindicate adoptability, a foster parent's interest in adopting the dependent child is sufficient to support a court's finding of general adoptability. (*I.W.*, *supra*, 180 Cal.App.4th at pp. 1526-1527.) Appellants argue, however, that "[a] single family's interest in adopting behaviorally challenged children does not constitute clear and convincing evidence [that] the children are specifically adoptable." The assertion misses several points. For example, the current foster parents were not merely "interested," as appellants describe them,<sup>10</sup> but "fully committed to the plan of adoption." Second, the behavioral challenges occurring in previous foster placements had not deterred the current foster parents, to whom the minors had already responded positively in their behavior; and nothing beyond mere speculation supports Father's assumption that this placement would fail before the adoption could take place. Third, the question of specific adoptability is less compelling when a child is generally adoptable, as these children were both found to be; as the court pointed out, "if this adoption for some reason fell through, the children are just smart,

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[A.L.] will ask to do when he's frustrated. Since the children have been in their current placement, there have been no reports of [S.L.] being intentionally aggressive toward her brother. Rather both children appear to be demonstrating normal/age appropriate sibling conflict and rivalry."

<sup>10</sup> Appellants comparison of the minors' circumstances to those presented in *In re Amelia S.* (1991) 229 Cal.App.3d 1060, 1065 misses the mark. The children discussed in that case were described as difficult to place; social worker had identified only a few foster parents who were "considering" adoption. That was insufficient, in the appellate court's view, to justify a finding by clear and convincing evidence that the children were likely to be adopted within a reasonable time.

adorable, and just really amazing children.”<sup>11</sup> (See *Sarah M.*, *supra*, 22 Cal.App.4th at p. 1649 [adoptability finding does not require that a proposed adoptive parent be “ ‘waiting in the wings’ ”].) Furthermore, the Legislature reminds us that even when a child is not yet placed in a preadoptive home or a foster family who is prepared to adopt the child, that fact “shall not constitute a basis for the court to conclude that it is not likely the child will be adopted.” (§ 366.26, subd. (c)(1).)

By the time a court is considering termination of parental rights, the “overriding concern” is “to provide a stable, permanent home in which a child can develop a lasting emotional attachment to his or her caretakers.” (*In re Baby Girl D.* (1989) 208 Cal.App.3d 1489, 1493-1494; *In re Marilyn H.* (1993) 5 Cal.4th 295, 304 (*Marilyn H.*).) Indeed, the section 366.26 hearing is “specifically designed to select and implement a *permanent* plan for the child.” (*Marilyn H.*, *supra*, at p. 304, italics added.) Adoption is clearly the preferred objective of the Legislature and the courts. (§ 366.26, subd. (b)(1); see *In re Jose V.* (1996) 50 Cal.App.4th 1792, 1799 [“[I]t is well established that there is a strong preference for adoption as the most permanent, and thus the best, plan for a dependent child. Therefore, if the court finds the child is adoptable and that none of the exceptions appl[ies], it is presumed, even in the absence of a specific finding by the court, that adoption is the choice that is in the child’s best interests.”])

Neither parent renews the claim that a statutory exception to the termination of parental rights applies. Having established no insufficiency of the evidence of adoptability or an applicable statutory exception, appellants have failed to meet their burden on appeal to show error in the juvenile court’s decision to free S.L. and A.L. for adoption. After experiencing trauma and neglect and unstable living situations most of

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<sup>11</sup> The court noted the maternal grandmother’s willingness to adopt as well as that of the foster parents.

their young lives, these children are entitled to a permanent home with the family to whom they are already attached.

*Disposition*

The June 4 and July 3, 2018 orders denying appellants' section 388 petitions and terminating parental rights are affirmed.

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ELIA, ACTING P.J.

WE CONCUR:

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BAMATTRE-MANOUKIAN, J.

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MIHARA, J.